

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL NO. 04-CR-0264
	:	
v.	:	
	:	
	:	
BILAL SABUR	:	

SURRICK, J.

SEPTEMBER 22, 2005

MEMORANDUM & ORDER

Presently before the Court is Defendant Bilal Sabur's Motion To Suppress Physical Evidence (Doc. No. 15). For the following reasons, Defendant's Motion will be denied.

I. FINDINGS OF FACT

In late December 2003 and early January 2004, Sergeant Joseph Cella of the Philadelphia Police Department received information that Defendant Bilal Sabur was engaging in illegal drug-related activities at 465 North Farson Street in Philadelphia ("the Residence"). (Tr. 8/18/05 at 5, 29.)¹ This information originated from two anonymous calls identifying the Defendant, his status as a wanted robbery suspect, and his illegal drug-related activities. (*Id.*) The anonymous caller also informed Sergeant Cella that Defendant had a broken leg and that he may have been selling drugs from an older-model green Pontiac Bonneville four-door sedan, which was parked in front of the Residence. (*Id.* at 5-6, 29.)

In response to the information provided by the anonymous source, Sergeant Cella

¹A suppression hearing was held on August 18, 2005.

assigned Detective John Maddox to investigate whether Defendant was, in fact, wanted for robbery. (*Id.* at 5-6, 28-29.) Detective Maddox learned that a warrant for the Defendant's arrest had been issued by the Court of Common Pleas of Philadelphia County pursuant to an affidavit of probable cause. (*Id.* at 28; Gov't Ex. 4.) The affidavit charged Bilal Sabur with having committed the following crimes on or about October 7, 2003: simple assault, aggravated assault, reckless endangerment of person, terroristic threats, robbery, criminal conspiracy, theft, receiving stolen property, possessing an instrument of crime, and several violations of the Uniform Firearms Act. (Gov't Ex. 4.)

Acting upon this information, several members of the Philadelphia Police Department investigated and surveilled the area around the Residence. (Tr. 8/18/05 at 6-7, 29-30.) On January 7, 2004, Detective Maddox briefly investigated the area proximate to the Residence and observed an older-model green Pontiac Bonneville four-door sedan fitting the description given by the anonymous caller. (*Id.* at 6, 29.) During the afternoon of January 8, 2004, Detective Maddox conducted surveillance of the Residence but did not obtain any information about Defendant's activities. (*Id.* at 6, 29-30.)

Later that day, Sergeant Cella and Detective Maddox conducted a second round of surveillance (*id.* at 6, 29-30) and made additional observations which corroborated the information provided by the anonymous source. They again observed the green Pontiac Bonneville and also saw a broken crutch in the trash awaiting collection in front of the Residence. (*Id.* at 6-7.) At approximately 10:45 p.m., the officers observed an individual exit the Residence. (*Id.* at 7-8, 30-31.) Sergeant Cella stopped the individual and determined that he was not the Defendant. (*Id.* at 7-8.) When Sergeant Cella and Detective Maddox showed this

person a photograph of Defendant, he informed the officers that he was going to buy cigarettes for Defendant, who was still inside the Residence. (*Id.* at 8, 30-31.) The individual also told the officers that Defendant had suffered a foot injury. (*Id.* at 8.)

Shortly after the conversation with this individual, Sergeant Cella organized a team of officers to execute the arrest warrant. (*Id.*) The team consisted of Sergeant Cella, Detective Maddox, Officer Joseph Roman, and four other officers. (*Id.* at 10, 17.) When the officers proceeded to knock and announce their presence at the Residence (*id.* at 8-9), Ms. Zakia Harper, the sole lessee of the Residence, answered the door. (*Id.* at 9, 64-65.) When the officers informed her that they were at the Residence to arrest Defendant, Harper gestured toward the area of the living room where Defendant was resting. (*Id.* at 9, 19.)

After Harper identified Defendant, the police entered the Residence and arrested him. (*Id.* at 19.) Defendant was on crutches and had a cast on his leg. (*Id.* at 10.) Detective Maddox searched the Defendant's person incident to his arrest. (*Id.* at 36-37.) During this search, he found \$468 and several small packets containing an off-white chunky substance, later identified as crack cocaine, in Defendant's front pocket. (*Id.* at 36-38; Gov't Ex. 2.)

The police also performed a protective sweep of the area immediately adjoining the living room of the Residence to ensure that no other dangerous individuals were on the premises. (Tr. 8/18/05 at 10, 34, 51.) From the living room, Officer Roman observed a metallic object protruding from a jacket on the kitchen floor. (*Id.* at 51-52, 59-60.) He immediately recognized this metallic object as a gun, later identified as a Smith & Wesson nine (9) millimeter, and recovered it from the scene.² (*Id.* at 52, 57; Gov't Ex. 5.) Officer Roman also discovered a

²The firearm was loaded with ammunition. (Tr. 8/18/05 at 52.)

packet containing a white chunky substance in plain view next to the jacket on the kitchen floor. (Tr. 8/18/05 at 60.) After seeing the Smith & Wesson firearm, Sergeant Cella, Detective Maddox, and Officer Roman saw and recovered an Ingram Tec-9 (“TEC-9”) nine (9) millimeter firearm on the top step of the stairs leading from the kitchen to the basement.³ (*Id.* at 11, 35, 55-56.) Harper identified both firearms as belonging to the Defendant. (*Id.* at 38.)

In his Motion, Defendant seeks to suppress the physical evidence recovered from the Residence, asserting that the police improperly arrested him in the home of a third party when they entered the Residence without obtaining either valid consent or a search warrant. The Government argues that Defendant was lawfully arrested and that the loaded firearms and drugs were properly seized.⁴

II. CONCLUSIONS OF LAW

A. The Arrest of Defendant

Generally, “a warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.” *Devenpeck v. Alford*, 125 S. Ct. 588, 593 (2004) (citing *United States v. Watson*, 423 U.S. 411, 417-24 (1976)). However, an arrest in the home “involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home.” *Payton v. New York*, 445 U.S. 573, 588-89 (1980) (quotation omitted). As a result, “searches and seizures inside a home without a warrant are presumptively unreasonable” under the Fourth Amendment. *Id.* at

³The firearm was loaded with ammunition. (Tr. 8/18/05 at 56.)

⁴The Government also seized several boxes of ammunition while at the Residence. At the beginning of the Suppression Hearing the Government agreed that this evidence must be suppressed. (Tr. 8/18/05 at 4.)

586. Nevertheless, it is well settled that “for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which a suspect lives when there is reason to believe the suspect is within.” *Id.* at 603. Thus, “police may enter a suspect’s residence to make an arrest armed only with an arrest warrant if they have probable cause to believe that the suspect is in the home.” *United States v. Agnew*, 407 F.3d 193, 196 (3d Cir. 2005).

Here, there is sufficient evidence that the Residence was Defendant’s home for purposes of the Fourth Amendment. Sergeant Cella received information from an anonymous source that Defendant was dealing drugs from the Residence. (Tr. 8/18/05 at 5.) At least a week later, Sergeant Cella received information that Defendant was still at the Residence. (*Id.*) Sergeant Cella’s anonymous source told him that Defendant “couldn’t run away” because he injured his leg. (*Id.*) During their surveillance, the police were able to obtain evidence which corroborated much of what the anonymous source had reported. They viewed both the green car and a broken set of crutches in front of the Residence. Harper also testified at the suppression hearing that Defendant was living at the Residence at the time of his arrest.⁵ (*Id.* at 65, 73.) All of this evidence suggests that the Residence was Defendant’s home when the police officers executed the arrest warrant. *See Steagald v. United States*, 451 U.S. 204, 230-31 (1981) (Rehnquist, C.J., concurring in the judgment, dissenting) (“If a suspect has been living in a particular dwelling for any significant period, say a few days, it can certainly be considered his ‘home’ for Fourth

⁵The warrant for Defendant’s arrest contains an address which is different than that of the Residence. (Gov’t Ex. 4.) However, such a discrepancy is not relevant “because all an arrest warrant must do is identify the person sought.” *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995).

Amendment purposes, even if the premises are owned by a third party and others are living there, and even if the suspect concurrently maintains a residence elsewhere as well.”).

Moreover, the police had probable cause to believe that Defendant was at the Residence when they sought to arrest him on January 8, 2004. Prior to entering the Residence, the police confirmed that the green car which was identified by the anonymous source was in front of the Residence. *See, e.g., United States v. Edmonds*, 52 F.3d 1236, 1247-48 (3d Cir. 1995) (noting that presence of suspect’s car in front of apartment contributed to reasonable conclusion that suspect was home at 6:45 a.m.). Further, the police learned from the individual who exited the Residence that Defendant was still inside. Since the residence was Defendant’s home for Fourth Amendment purposes, we conclude that the police properly entered the Residence because they had probable cause to believe that Defendant was present.

Even if the Residence was not Defendant’s home, as Defendant argues, the police officers still properly entered the Residence and arrested Defendant. Because Defendant was at least an overnight guest, he had an assertable privacy interest which conferred standing on him to challenge the police officers’ entry.⁶ *Minnesota v. Olson*, 495 U.S. 91, 96-97 (holding that one’s status as an overnight guest is alone sufficient to demonstrate a reasonable expectation of privacy); *Agnew*, 407 F.3d at 196. However, even if a suspect “was a non-resident with a privacy interest, the Fourth Amendment would not protect him from arrest by police armed with an arrest warrant.”⁷ *Agnew*, 407 F.3d at 197; *see also United States v. Stewart*, 131 F. App’x 350, 352 (3d

⁶The Government concedes that Defendant has standing to challenge the search and seizure which occurred at the Residence. (Tr. 8/18/05 at 4.)

⁷Defendant relies on *Steagald v. United States* to argue that the police officers violated his Fourth Amendment rights when they entered the Residence to arrest him. Under *Steagald*, an

Cir. 2005). Under this analysis, the officers' entry into the Residence was lawful because it was obtained pursuant to an arrest warrant for Defendant. In *Agnew* and *Stewart*, the Third Circuit adopted the rationale of *United States v. Underwood*, 717 F.2d 482 (9th Cir. 1983) (en banc), concerning a person's right to privacy in another's home:

A person has no greater right of privacy in another's home than in his own. If an arrest warrant and reason to believe the person named in the warrant is present are sufficient to protect that person's fourth amendment privacy rights in his own home, they necessarily suffice to protect his privacy rights in the home of another.

Agnew, 407 F.3d at 197 (quoting *Underwood*, 717 F.2d at 484); *see also Stewart* 131 F. App'x at 352 (same). Because the officers entered the Residence armed with an arrest warrant for Defendant, and had probable cause to believe that he was inside, their entry was lawful and Defendant's Fourth Amendment rights were not violated.

B. The Search Incident to Defendant's Arrest

When a suspect is lawfully arrested, "it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the [suspect] might seek to use in order to resist arrest or effect his escape." *Chimel v. California*, 395 U.S. 752, 762-63 (1969); *see also New York v. Belton*, 453 U.S. 454, 461 (1981). Moreover, "it is entirely reasonable for the

officer may not enter a third-party's home to search for the subject of an arrest warrant without first obtaining a search warrant. *Id.* at 211-14. *Steagald* however, only protects "the interests of the third-party owner of the residence, not the suspect himself," regardless of whether the suspect has a reasonable expectation of privacy in the home. *Agnew*, 407 F.3d at 196-97; *see also Stewart*, 131 F. App'x at 352 ("*Steagald* protects the rights of a resident third-party, not a non-resident arrestee, and a non-resident arrestee has no standing to assert the rights of a resident third-party.").

Defendant also focuses on whether the police obtained valid consent to enter the Residence from Harper. "The right of a third party not named in the arrest warrant to the privacy of [her] home may not be invaded without a search warrant. But this right is personal to the home owner and cannot be asserted vicariously by the person named in the arrest warrant." *Agnew*, 407 F.3d at 197 (quoting *Underwood*, 717 F.2d at 484).

arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.” *Chimel*, 395 U.S. at 763. When Detective Maddox searched Defendant incident to his lawful arrest, he patted him down and felt an object in his front pocket. (Tr. 8/18/05 at 36.) Upon closer inspection, Detective Maddox found a bag containing several small packets which contained an off-white substance, later identified as crack cocaine. (*Id.*) This search and seizure did not violate Defendant's Fourth Amendment rights.⁸

C. The Firearms Seized in Plain View

It is a well recognized exception to the Fourth Amendment's warrant requirement that, under certain circumstances, the police may seize contraband and other incriminating evidence discovered in plain view. *Horton v. California*, 496 U.S. 128, 141 (1990). Warrantless seizures of incriminating evidence in plain view are lawful upon the satisfaction of three well-defined elements. *Id.* at 136-137. First, the police “must not have violated the Fourth Amendment in ‘arriving at the place from which the evidence could be plainly viewed.’”⁹ *United States v. Menon*, 24 F.3d 550, 559 (3d Cir. 1994) (quoting *Horton*, 496 U.S. at 136). Second, the incriminating character of the evidence in plain view must be immediately apparent to the officer. *Horton*, 496 U.S. at 136. Finally, an officer “must also have a lawful right of access to the object itself.” *Id.* at 137.

⁸Defendant does not challenge the way in which the search incident to arrest was conducted. Instead, he argues that the evidence found on his person should be suppressed because the officers did not lawfully enter the Residence. As discussed above, this argument is without merit.

⁹Where an initial warrantless intrusion brings the police within plain view of incriminating evidence, the seizure of that evidence is legitimate where the warrantless intrusion is justified by a recognized exception to the warrant requirement. *Horton*, 496 U.S. at 135.

Here, both the Smith & Wesson and TEC-9 firearms were lawfully seized in plain view. As discussed above, the police did not violate the Fourth Amendment in entering the Residence. Once inside the Residence, the officers discovered the firearms while performing a protective sweep. (Tr. 8/18/05 at 51-52, 55-56.) A protective sweep is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” *Maryland v. Buie*, 494 U.S. 325, 327 (1990). Such sweeps do not offend the Fourth Amendment even where no probable cause or reasonable suspicion exists. *Id.* at 334. However, the scope of a protective sweep is limited to the area “immediately adjoining the place of arrest from which an attack could be immediately launched.” *Id.* If a protective sweep extends beyond this area, “there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Id.*

Here, the police permissibly performed a protective sweep of the Residence. (Tr. 8/18/05 at 10, 51.) The police initially swept the living room and the kitchen, areas immediately adjoining the place of arrest. (*Id.* at 10-11.) The sweep was performed to ensure the safety of the officers from persons who might have been in position to launch an attack, a concern which was especially keen given the discovery of the Smith & Wesson firearm in plain view on the kitchen floor. (*Id.*) Upon finding the Smith & Wesson firearm, the officers possessed “articulable facts” warranting a reasonably prudent officer to believe that other persons may pose an immediate danger to the officer and others. In particular, the loaded Smith & Wesson firearm and its proximity to the entrance to the basement gave rise to a warranted belief that others may have been located in the basement. (*Id.* at 51-52, 55.) It was at this point that the officers saw the

TEC-9 at the top of the stairs leading from the kitchen to the basement. Since the protective sweep which led to the plain view discovery of the firearms was lawful, the police also had a lawful right to seize both firearms.¹⁰

III. CONCLUSION

After reviewing all of the evidence, we conclude that the police lawfully entered the Residence and seized the Defendant pursuant to the power conferred upon them by the arrest warrant. The officers also lawfully searched Defendant incident to his arrest and properly seized the crack cocaine which was uncovered by that search. Further, the police properly seized the loaded firearms which were discovered in plain view during the protective sweep of the kitchen and basement.

An appropriate Order follows.

¹⁰Defendant argues that the Court should discount the police officers' testimony regarding the Smith & Wesson firearm because they offered differing accounts about which part of the weapon was visible. (Tr. 8/18/05 at 80.) Defendant's concerns are misplaced, however, since he concedes that the three officers who testified about this firearm all said "that they saw the gun on the floor" in plain view. (*Id.*) Defendant also contends that there is inconsistent testimony regarding the TEC-9 firearm which was discovered on a step leading to the basement. (*Id.* at 83.) Sergeant Cella testified that he saw the firearm leaning up against the wall as he turned to exit the kitchen. (*Id.* at 11.) Detective Maddox explained that he led Officer Roman down the basement stairs from the kitchen, saw the TEC-9, and instructed Officer Roman to collect the gun. (*Id.* at 35.) Officer Roman, however, described how he saw the firearm as he was ascending the basement stairs leading to the kitchen. (*Id.* at 55-56.) While these accounts differ somewhat concerning how the TEC-9 was discovered, each explanation of the seizure comports with the requirements of the Fourth Amendment because all of the testimony supports the conclusion that the firearm was discovered during an appropriate protective sweep. Further, each of these officers state that the TEC-9 was in plain view. Minor testimonial discrepancies do not undercut the conclusion that the firearms were properly seized.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL NO. 04-CR-0264
	:	
v.	:	
	:	
	:	
BILAL SABUR	:	

ORDER

AND NOW, this 22nd day of September, 2005, upon consideration of Bilal Sabur's Motion to Suppress Physical Evidence (Doc. No. 15, 04-CR-0264), and all papers filed in support thereof and in opposition thereto, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge